

UNITED STATES OF AMERICA

v.

JAVIER AVILA-AGUILAR,

Defendant.

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CaseNos. 3:08-cr-00174-JO  
3:11-cv-70029-JO

Opinion on Defendant's Second  
28 U.S.C. § 2255 Motion

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JONES, Judge.

Before the court is Javier Avila-Aguilar's Motion for Relief under 28 U.S.C. § 2255.

(#113) For the reasons that follow, I deny the motion.

#### BACKGROUND

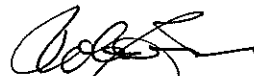
On October 30, 2009, following a 3 day trial, defendant was found guilty of one count of possession with intent to distribute cocaine and was sentenced to 20 years in prison with a 3 year term of supervised release. Defendant unsuccessfully appealed both the conviction and the sentence to the Ninth Circuit Court of Appeals. Thereafter, defendant filed a motion for relief under 28 U.S.C. § 2255 to set aside the criminal judgment and vacate the sentence. (#97) In his motion, defendant contended: (1) the evidence offered against him by the government was insufficient to support his conviction; and (2) his counsel provided ineffective assistance by advising defendant not to consider the plea agreement options offered by the government, by failing to file a motion to suppress and by failing to challenge defendant's sentence as excessive. On April 18, 2013, I denied defendant's § 2255 motion. (# 111)

On November 7, 2013, defendant filed a "MOTION FOR LEAVE TO AMEND 28 U.S.C. § 2255 PLEADINGS PURSUANT TO 15(c)(1)(B), FED. R. CIV P." (#113) and "AMENDED MOTION UNDER 28 U.S.C. § 2255 TO CORRECT, REDUCE, OR VACATE SENTENCE." (#114) In the motion, defendant claims two "new" reasons his counsel provided ineffective assistance.

#### DISCUSSION

As set forth above, defendant previously filed a motion to set aside his conviction. As a result, the current motion must be denied. Pursuant to the Antiterrorism and Effect Death Penalty Act of 1996 ("AEDPA"), defendant is prohibited from filing a second Section 2255 motion unless he first obtains certification from the Ninth Circuit Court of Appeals that his motion falls within the narrow category of successive motions authorized by the AEDPA. See 28 U.S.C. 2255(h). Defendant has not established that he has obtained the required authorization to file a second motion under Section 2255. Accordingly this motion is DENIED.

DATED this 13<sup>th</sup> day of January, 2014.



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Hon. Robert E. Jones  
Senior, District Court Judge